SENATE BILL No. 250

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-4-8; IC 6-3.5.

Synopsis: Distribution of local option income taxes. Specifies that the county in which an individual pays local option income taxes is the county in which the individual resides (if the county has a tax) or works (if the county where the individual resides does not have a tax) for the majority of the taxable year. Provides that changes in withholding resulting from changes in residence during a taxable year shall be made in accordance with the requirements prescribed by the department of state revenue.

Effective: Upon passage; January 1, 2004 (retroactive).

Lawson C

January 8, 2004, read first time and referred to Committee on Finance.

Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 250

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3-4-8, AS AMENDED BY P.L.192-2002(ss), SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as provided in subsection (d) or (l), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under IC 6-3.5, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall

not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars ($10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars ($25); or

(3) a three (3) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed seventy-five dollars ($75).

An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period. If an employer files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under this section, section 8.1 of this chapter, or IC 6-2.5-6-1.

(c) For purposes of determining whether an employee is subject to taxation under IC 6-3.5, an employer is entitled to rely on the statement of an employee as to the employee's **current** county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's **current** county of residence. **If an employee notifies the employer that the individual has changed the individual's current county of residence, the employer shall adjust the amount withheld after the date of notification in accordance with the requirements prescribed by the department.**

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and
(2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

(1) the total amount of wages paid to the employer's employees;
(2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
(3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
(4) the amount of income tax, if any, imposed under IC 6-3.5 and deducted therefrom in accordance with this section; and
(5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.5, withheld from the employees, on the forms prescribed by the department.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.5, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.5, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and IC 6-3.5 within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar ($1), no refund shall be made.

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and IC 6-3.5, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

(1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;

(2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;

(3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and

(4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

SECTION 2. IC 6-3.5-1.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. As used in this chapter:

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5(a), except that in the case of a county taxpayer who is not a resident of a county that has imposed the county adjusted gross income tax, the term includes only adjusted gross income derived from his principal place of business or employment.

"Civil taxing unit" means any entity having the power to impose ad valorem property taxes except a school corporation. The term does not include a solid waste management district that is not entitled to a distribution under section 1.3 of this chapter. However, in the case of a consolidated city, the term "civil taxing unit" includes the consolidated city and all special taxing districts, all special service districts, and all entities whose budgets and property tax levies are subject to review under IC 36-3-6-9.

"County council" includes the city-county council of a consolidated city.

"County taxpayer" as it relates to a county for a year means any individual:

(1) who resides in that county ~~on~~ **for** the ~~date~~ **time** specified in section 16 of this chapter; or

(2) who maintains ~~his~~ **the individual's** principal place of business or employment in that county ~~on~~ **for** the ~~date~~ **time** specified in section 16 of this chapter and who does not ~~on~~ **for** that same ~~date~~ **period** reside in another county in which the county adjusted gross income tax, the county option income tax, or the county economic development income tax is in effect.

"Department" refers to the Indiana department of state revenue.

"Nonresident county taxpayer" as it relates to a county for a year means any county taxpayer for that county for that year who is not a resident county taxpayer of that county for that year.

"Resident county taxpayer" as it relates to a county for a year means any county taxpayer who resides in that county ~~on~~ **for** the ~~date~~ **time** specified in section 16 of this chapter.

"School corporation" means any public school corporation established under Indiana law.

SECTION 3. IC 6-3.5-1.1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 16. (a) For purposes of this chapter, an individual shall be treated as a resident of the county in which ~~he (1) maintains a home if the individual maintains only one (1) in Indiana; (2) if subdivision (1) does not apply, is registered to vote; (3) if neither subdivision (1) or (2) applies, registers his personal automobile; or (4) if neither subdivision (1), (2), or (3) applies,~~ **the individual** spends the majority of ~~his~~ **the individual's** time spent in Indiana during the taxable year in question. **The following may be considered in establishing where the individual spends the majority of the individual's time:**

(1) Where the individual maintains a home.

(2) Where the individual is registered to vote.

(3) Where the individual registers the individual's personal automobile.

(4) The address or addresses that the individual states in forms claiming exemptions for purposes of employer withholding.

(5) Where the individual indicates the individual resides for the majority of the year on the individual's state adjusted gross income tax return for the taxable year.

(b) The ~~residence or~~ principal place of business or employment of an individual is to be determined ~~on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of his residence or principal place of employment or business to another county in Indiana during a calendar year, his liability for county adjusted gross income tax is not affected.~~ **where the individual's principal place of business or employment is located for the majority of the taxable year.**

(c) Notwithstanding ~~subsection (b),~~ **subsections (a) and (b),** if an individual becomes a county taxpayer for purposes of IC 36-7-27 during a calendar year because the individual:

(1) changes the location of the individual's residence to a county

in which the individual begins employment or business at a qualified economic development tax project (as defined in IC 36-7-27-9); or

(2) changes the location of the individual's principal place of employment or business to a qualified economic development tax project and does not reside in another county in which the county adjusted gross income tax is in effect;

the individual's adjusted gross income attributable to employment or business at the qualified economic development tax project is taxable only by the county containing the qualified economic development tax project.

SECTION 4. IC 6-3.5-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. As used in this chapter:

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5. However, in the case of a county taxpayer who is not treated as a resident county taxpayer of a county, the term includes only adjusted gross income derived from his principal place of business or employment.

"Civil taxing unit" means any entity, except a school corporation, that has the power to impose ad valorem property taxes. The term does not include a solid waste management district that is not entitled to a distribution under section 1.3 of this chapter. However, in the case of a county in which a consolidated city is located, the consolidated city, the county, all special taxing districts, special service districts, included towns (as defined in IC 36-3-1-7), and all other political subdivisions except townships, excluded cities (as defined in IC 36-3-1-7), and school corporations shall be deemed to comprise one (1) civil taxing unit whose fiscal body is the fiscal body of the consolidated city.

"County income tax council" means a council established by section 2 of this chapter.

"County taxpayer", as it relates to a particular county, means any individual:

(1) who resides in that county ~~on~~ **for** the ~~date~~ **time** specified in section 20 of this chapter; or

(2) who maintains ~~his~~ **the individual's** principal place of business or employment in that county ~~on~~ **for** the ~~date~~ **time** specified in section 20 of this chapter and who does not reside ~~on~~ **for** that ~~same date~~ **period** in another county in which the county option income tax, the county adjusted income tax, or the county economic development income tax is in effect.

"Department" refers to the Indiana department of state revenue.

"Fiscal body" has the same definition that the term is given in IC 36-1-2-6.

"Resident county taxpayer", as it relates to a particular county, means any county taxpayer who resides in that county ~~on~~ **for** the ~~date~~ **time** specified in section 20 of this chapter.

"School corporation" has the same definition that the term is given in IC 6-1.1-1-16.

SECTION 5. IC 6-3.5-6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 20. (a) For purposes of this chapter, an individual shall be treated as a resident of the county in which ~~he (1) maintains a home if the individual maintains only one (1) in Indiana; (2) if subdivision (1) does not apply, is registered to vote; (3) if neither subdivision (1) or (2) applies, registers his personal automobile; or (4) if neither subdivision (1), (2), or (3) applies,~~ **the individual** spends the majority of ~~his~~ **the individual's** time spent in Indiana during the taxable year in question. **The following may be considered in establishing where the individual spends the majority of the individual's time:**

(1) Where the individual maintains a home.

(2) Where the individual is registered to vote.

(3) Where the individual registers the individual's personal automobile.

(4) The address or addresses that the individual states in forms claiming exemptions for purposes of employer withholding.

(5) Where the individual indicates the individual resides for the majority of the year on the individual's state adjusted gross income tax return for the taxable year.

(b) The residence or principal place of business or employment of an individual is to be determined ~~on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of his residence or principal place of employment or business to another county in Indiana during a calendar year, his liability for county option income tax is not affected.~~ **where the individual's principal place of business or employment is located for the majority of the taxable year.**

(c) Notwithstanding ~~subsection (b),~~ **subsections (a) and (b),** if an individual becomes a county taxpayer for purposes of IC 36-7-27 during a calendar year because the individual:

(1) changes the location of the individual's residence to a county in which the individual begins employment or business at a qualified economic development tax project (as defined in

IC 36-7-27-9); or

(2) changes the location of the individual's principal place of employment or business to a qualified economic development tax project and does not reside in another county in which the county option income tax is in effect;

the individual's adjusted gross income attributable to employment or business at the qualified economic development tax project is taxable only by the county containing the qualified economic development tax project.

SECTION 6. IC 6-3.5-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 17. (a) For purposes of this chapter, an individual shall be treated as a resident of the county in which the individual ~~(1) maintains a home if the individual maintains only one (1) in Indiana; (2) if subdivision (1) does not apply, is registered to vote; (3) if neither subdivision (1) or (2) applies, registers the individual's personal automobile; or (4) if neither subdivision (1), (2), or (3) applies,~~ spends the majority of the individual's time spent in Indiana during the taxable year in question. **The following may be considered in establishing where the individual spends the majority of the individual's time:**

(1) Where the individual maintains a home.

(2) Where the individual is registered to vote.

(3) Where the individual registers the individual's personal automobile.

(4) The address or addresses that the individual states in forms claiming exemptions for purposes of employer withholding.

(5) Where the individual indicates the individual resides for the majority of the year on the individual's state adjusted gross income tax return for the taxable year.

(b) The residence or principal place of business or employment of an individual is to be determined ~~on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes location of residence or principal place of employment or business to another county in Indiana during a calendar year, the individual's liability for county economic development income tax is not affected.~~ **where the individual's principal place of business or employment is located for the majority of the taxable year.**

(c) Notwithstanding ~~subsection (b),~~ **subsections (a) and (b),** if an individual becomes a county taxpayer for purposes of IC 36-7-27 during a calendar year because the individual:

(1) changes the location of the individual's residence to a county

in which the individual begins employment or business at a qualified economic development tax project (as defined in IC 36-7-27-9); or

(2) changes the location of the individual's principal place of employment or business to a qualified economic development tax project and does not reside in another county in which the county economic development income tax is in effect;

the individual's adjusted gross income attributable to employment or business at the qualified economic development tax project is taxable only by the county containing the qualified economic development tax project.

SECTION 7. [EFFECTIVE UPON PASSAGE] **IC 6-3-4-8, IC 6-3.5-1.1-16, IC 6-3.5-6-20, and IC 6-3.5-7-17, all as amended by this act, apply to:**

(1) taxable years beginning after December 31, 2003; and

(2) employer withholding after the effective date of this SECTION.

SECTION 8. **An emergency is declared for this act.**